From Environmental Review to Threshold Fights: CEQA Litigation After AB 130 and SB 131

For more than 50 years, California Environmental Quality Act (CEQA) litigation has followed a familiar script: lengthy environmental review, detailed impact analysis and disputes over whether agencies went far enough. But in June 2025, California passed two budget trailer bills that are among the most consequential CEQA reforms: AB 130 and SB 131.

For qualifying housing projects, lawmakers have shifted the question at the heart of many CEQA disputes from whether an environmental impact report (EIR) is adequate to whether it is required at all.

Let's analyze this new phase of CEQA practice and what agencies and developers are considering as they navigate these changes, recognizing that courts have not yet been tasked with interpreting or applying many of these new provisions.

How These CEQA Reforms Are Different

CEQA has been amended before — frequently, in fact. But most prior reforms followed a predictable pattern: they included project-specific exemptions, procedural tweaks, and incremental streamlining that left the law's core structure intact. AB 130 and SB 131 represent a meaningful break from that pattern, particularly in their reliance on broader exemptions and streamlined pathways for housing projects.

"These are among the most expansive and direct CEQA reforms targeted at housing projects to date," said Christina Berglund, partner at Remy Moose Manley, LLP, whose practice focuses on land use and environmental law. "Budget trailer bills signal urgency. The governor was sending a message about what he wants to prioritize with these reforms."

AB 130 creates a broad CEQA exemption for infill housing projects, provided the project is consistent with the applicable general plan and zoning ordinance and satisfies additional statutory criteria. While that consistency requirement is a central threshold, eligibility ultimately depends on meeting each element of the statute.

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The scope of projects that could potentially qualify is broader than under previous infill exemptions, including AB 1449's 2023 exemption for 100% affordable housing. AB 130 also freezes local changes to building standards from Oct. 1, 2025, through June 1, 2031. Together, these new provisions aim to **increase infill housing development** in California.

SB 131 approaches the issue from a slightly different angle by adding what has been referred to as the "near-miss" exemption for eligible housing projects. If a housing project satisfies all but one of the requirements of a statutory or categorical exemption, SB 131 reduces the scope of CEQA review to that of the single unmet criterion. On paper, this could meaningfully reduce the scope of environmental review and, in turn, the cost and time burden for projects that fall just short of full exemption. SB 131 also creates new exemptions for certain projects, including farmworker housing, water infrastructure, wildfire risk reduction projects, advanced manufacturing, and rezonings that implement an approved housing element.

Together, the bills also appropriated $500 million to California's Homeless Housing, Assistance and Prevention (HHAP) Program. This demonstrates that the legislature sees the bills as housing-crisis measures first and environmental-law refinements second.

How CEQA Litigation Could Evolve

One of the most persistent critiques of CEQA is that it has become a tool for delay, operating largely outside the law's stated environmental purpose. Opponents of a project — whether neighbors, business competitors or other interested parties — have used the CEQA process to force costly analysis, require additional mitigation or delay project timelines by questioning whether the EIR's analysis was thorough enough. These new provisions limit the opportunity to bring EIR-based challenges for qualifying housing projects by eliminating the need for an EIR in some cases and narrowing the scope of environmental review in others, thereby reducing the range of potential claims.

Rather than fighting over the adequacy of the EIR's analysis, litigation may increasingly focus on whether a project qualifies for an exemption under AB 130 or SB 131.

That shift changes the sequencing of risk. Under the traditional CEQA framework, litigation risk typically materializes after months or years of environmental review. With the new exemption-driven model, key legal determinations are moved to the outset of the approval process. A project's viability may now turn on whether it qualifies for an exemption — that is, whether CEQA applies at all — rather than the sufficiency of a completed EIR. While challenges will still arise after project approval, as they traditionally do, those challenges are more likely to focus on early eligibility determinations.

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Where Disputes Are Likely to Arise

As litigation shifts to claims involving exemption eligibility, disputes are likely to cluster around the interpretation of the statutory criteria and how agencies document compliance.

"Instead of fighting over whether the project's impacts were properly analyzed, petitioners will fight over whether the project met each exemption criterion. I would expect to see creative arguments about eligibility and whether projects have demonstrated compliance with each requirement," said Berglund.

AB 130, in particular, introduces a series of detailed eligibility requirements that may serve as a gatekeeping threshold. Projects must demonstrate strict compliance with each element to qualify. A central issue is whether the project is consistent with the applicable general plan and zoning ordinance.

Traditionally, courts have given cities and counties flexibility on general plan consistency determinations. General plans are sprawling documents with policies that often point in different directions, and courts defer to agencies' discretion to weigh those policies in determining whether a project is consistent overall.

But a 2023 appellate court decision in ***United Neighborhoods for Los Angeles v. City of Los Angeles*** drew a sharper line, focusing on the word "applicable." The case concerned the application of the Class 32 infill exemption under Section 15332 of the CEQA guidelines to secure approval for a hotel project that would involve the removal of rent-stabilized apartments. To qualify for the Class 32 infill exemption, a project must be consistent with all applicable general plan policies. The court reaffirmed that agencies are generally afforded deference in determining project consistency but held that such deference applies only if the agency has actually identified and considered all policies applicable to the project.

The court found the record did not demonstrate that the city had considered its Housing Element policies relating to preservation of affordable housing and declined to defer to the city's consistency determination. Because formalized findings are not required to document an exemption determination, this decision suggests a heavier lift for agencies than exemptions have traditionally demanded and runs counter to the underlying idea that exemptions exist to streamline the process.

This issue could be significant in the context of AB 130, which uses nearly identical language to **Section 15332** — requiring a housing project to be "consistent with the applicable general plan and zoning ordinance." In light of that parallel, similar arguments regarding the scope of the consistency analysis may arise. Accordingly, it would be prudent for a local agency to look beyond its land use element for applicable general plan policies when considering project consistency for housing projects, and to make that analysis explicit in the record, rather than relying on an implied determination.

This does not change the central role of the administrative record in CEQA litigation. Rather, it shifts the need to include substantial evidence supporting each factual determination necessary to establish eligibility. This may take on added importance because agencies are not required to adopt formal findings when approving exemptions; as a result, the administrative record itself must supply the evidentiary basis for each element of the exemption.

As for SB 131, the near-miss provision raises its own set of open questions. How narrowly will courts define the scope of a focused EIR? If a project fails on one criterion — say, a traffic threshold — will petitioners argue that traffic-related noise impacts must also be analyzed? The answer to that question, when it arrives from the courts, will shape how SB 131 is used. Until judicial guidance emerges, agencies will need to determine how to implement the "near-miss" provision and define the appropriate scope of focused environmental review to avoid potentially undercutting the intended efficiency gains of SB 131.

How Approval Strategies Could Change

The shift from environmental review to exemption eligibility may also influence how projects are evaluated and documented during the application and approval process.

As agencies navigate the practical implementation of AB 130 and SB 131, early coordination with developers will help identify the most viable exemption pathway and ensure that each qualifying criterion is addressed and documented.

For agencies, the change is also significant. Approval strategies may place greater emphasis on supported CEQA exemption determinations that can withstand legal challenge once the project is approved, instead of lengthy environmental analyses. Under AB 130, agencies must also approve or disapprove a project within 30 days following completion of Tribal consultation. Together, these requirements are likely to drive the creation of more structured application requirements, internal checklists, and detailed documentation around exemption findings.

This dynamic also introduces new considerations for developers. In practice, if an exemption is available and supportable, it is generally the better pathway, especially when viability has been vetted in coordination with the approving agency. In some cases, developers may favor more established exemptions with a developed body of case law over newer statutory exemptions that carry greater legal uncertainty, focusing on relative litigation exposure among available options.

In the near term, both agencies and applicants are likely to proceed cautiously. Early projects will serve as test cases, with practitioners investing more time up front to ensure their exemption eligibility can be clearly supported. In some cases, this could result in slower initial approvals despite the intent of streamlining.

What to Expect in 2026 and Beyond

As with any new legislation, these new provisions could create some uncertainty for practitioners at first. Agencies are developing new application checklists and internal processes to implement these new exemptions and to ensure eligibility is carefully analyzed. Developers are cautiously evaluating whether their projects meet the exemption-qualifying criteria, and courts have not yet been asked to weigh in. That combination poses a certain level of risk to anyone who moves aggressively, reinforcing the importance of building an administrative record that includes substantial evidence supporting each statutory criterion.

The first appellate decisions interpreting these exemptions will carry outsized weight — setting defaults that agencies statewide will rely on. Courts have shown sensitivity to housing-crisis pressures in recent years, particularly in cases where challenges appear designed to obstruct rather than protect legitimate environmental interests. How that will translate with these new exemptions, however, remains to be seen.

Additional legislation is also likely. Bills that clarify ambiguities in AB 130 and SB 131 and target other project types, including industrial, infrastructure, and data centers, are expected to move through the legislature in the coming sessions. **SB 887**, for example, would clarify that **data centers do not qualify for streamlined approvals** under the advanced manufacturing CEQA exemption, reflecting ongoing battles over which projects fall within the scope of the exemption.

The passage of AB 130 and SB 131 reflects a significant legislative effort to address the ways in which CEQA has affected housing project approvals and timelines.

> How these provisions are implemented and interpreted will shape their longer-term impact.

Guidance for Advising Developers

For developers, the central question is not simply whether a project qualifies for an exemption, but whether that pathway delivers certainty and efficiency. The value of these new exemptions will ultimately depend on whether they operate as intended to reduce approval timelines and litigation.

This means CEQA attorneys advising developers interested in new statutory exemptions for infill housing should consider:

- Early engagement with the approving agency to align on the exemption strategy before submitting the application
- Documenting compliance with each exemption criterion explicitly, as courts will look for evidence that each element was actually considered, not just assumed
- Treating the application and approval process as litigation preparation and ensuring any factual claim is supported with adequate documentation
- Assessing risk tolerance honestly. New exemptions could offer significant time and cost savings, but they also carry uncertainty.

Guidance for Advising Agencies

Agencies face a similar set of pressures in implementing new exemptions faithfully while building records that can withstand legal challenges. The streamlining that AB 130 and SB 131 promise is only realized if exemption determinations are held up in court.

Practitioners advising agencies should consider:

- Developing detailed checklists or standardized application materials that walk applicants through every exemption criterion. This protects the agency as much as the developer.
- Being explicit about which general plan and zoning policies were considered applicable to a given project and why.
- Ensuring that substantial evidence supports each exemption determination, as the administrative record must reflect that each statutory requirement was considered and satisfied, particularly in the absence of formal findings.

Where CEQA Litigation Is Headed

AB 130 and SB 131 do not "gut" CEQA but rather reflect an effort to recalibrate how environmental review operates in the context of infill housing projects. The law remains an active and enforceable framework for judicial oversight of discretionary project approvals. What changes with new exemptions for infill housing is the nature of the potential CEQA claims. Rather than challenging the adequacy of environmental analysis, legal and factual claims challenging project approvals are likely to center on whether a project qualifies for a particular exemption.

For CEQA attorneys, that means continued focus on building an administrative record to support any factual determinations, anticipating new legal arguments, and paying close attention to the first appellate decisions that interpret the new exemptions. Lawyers who understand these changes in depth and help their clients navigate the CEQA exemptions (not just the environmental questions) will be best positioned as CEQA evolves. Sign up for CEB to track developments and receive practice guidance to navigate this evolution.

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